

Michigan Small Distiller Licensing Requirements & General Information

A Small Distiller license:

- License issued by the Liquor Control Commission (“Commission”) to manufacture spirits, not to exceed 60,000 gallons annually of all brands combined.
- License also includes the manufacture of Brandy.
- May offer free samples to consumers on the manufacturing premises.
- May sell spirits to consumers for consumption on the manufacturing premises.
- May sell spirits to consumers for off-premises consumption (take-out) for not less than the uniform price set by the Commission.
- May **not** sell spirits directly to Michigan retail licensees.
- May sell spirits to the Michigan Liquor Control Commission who resells spirit products through the spirit distribution system.
- Must contract with an Authorized Distribution Agent (“ADA”) to warehouse and deliver spirits to retailers through the Commission’s spirit distribution system.
- Must obtain a “Distilling, Rectifying, Blending and/or Bottling Spirits” Basic Permit from Alcohol and Tobacco Tax and Trade Bureau (“TTB”), previously known as BATF.
- \$100.00 annual license fee.

How To Apply For A Small Distiller License:

Applicants for a Small Distiller license must submit the following documents:

- **LICENSE APPLICATION** - “Application for New License, or Application of Buyers for Transfer of Ownership or Interest in License” (Form LC-687). Additional documents are required for corporate, LLC & partnership applicants, as described on pages 2 & 3.
- **INSPECTION FEE** - A \$70.00 nonrefundable inspection fee for each license applying for is required to authorize the field investigation. (Check payable to “State of Michigan”.)

The following items do not need to be submitted with the initial application. They will be requested upon Commission approval of the license application.

- **FEDERAL BASIC PERMIT** – “Distilling, Rectifying, Blending and/or Bottling Spirits” Basic Permit, issued by the TTB. Issuance of this Permit by TTB will need to be verified prior to the Commission issuing a license.
- **PROOF OF FINANCIAL RESPONSIBILITY** – Requirement to provide security for liability of not less than \$50,000.00. May be in the form of cash, unencumbered securities, liquor liability insurance, constant value bond, or membership in a group self-insurance pool authorized by law that provides security for liability under Section 436.1803 of the Liquor Control Code. (Proof of Financial Responsibility - Form LC-95 will be mailed upon Commission approval of the license application).
- **SERVER TRAINING REQUIREMENT** – Requirement for licensees to have server trained supervisory personnel employed during all hours alcoholic beverages are served. Server Training forms will be mailed upon Commission approval of the license application.

In addition to the preceding documents required by all applicants, **CORPORATIONS** shall submit the following information per Rule 436.1109:

- Copy of current filed Articles of Incorporation.
- Current "Certificate of Good Standing" from the state where incorporated, if incorporated outside of this state.
- "Report of Corporate Officers, Directors & Board of Directors" (Form LC-52).
- "Individual Stockholder/Corporate Stockholder Questionnaire" (Form LC-621), completed by each stockholder holding 10% or more stock interest.
- "Limited Partners, Stockholders & Members Statement" (Form LC-38), completed by each stockholder holding less than 10% stock interest.
- *Note:* All stockholders holding 10% or more corporate stock in applicant corporation will be required to be fingerprinted by local law enforcement agency. Enforcement Investigator will release necessary forms to local law enforcement agency.

In addition to the LC-687 and other documents required by all applicants, **LIMITED LIABILITY COMPANIES ("LLC")** shall submit the following information pursuant to Rule 436.1110:

- Copy of Articles of Organization and any amendments to the Articles of Organization.
- Copy of Certificate of Authority to do business in Michigan, if the LLC is a non-Michigan LLC.
- Copy of Operating Agreement entered into by members.
- Copy of most recent annual statement filed with the Michigan Department of Consumer & Industry Services, Corporations and Securities Bureau. Newly organized LLC's will not have filed any such document yet.
- "Report of Limited Liability Company Members, Managers and Assignees" (Form LC-52A).
- "Individual Stockholder or Corporate Stockholder Questionnaire" Form (LC-621), completed by each member holding 10% or more of the total interest in LLC. Also, Form LC-621 should be completed for an assignee of a membership interest or a manager with a percentage distribution of 10% or more in the LLC.
- "Limited Partners, Stockholders or Members Statement" (Form LC-38), completed by member holding less than 10% of the total interest in the LLC. Also, Form LC-38 should be completed for an assignee of a membership interest or a manager with a percentage distribution of less than 10% in the LLC.
- *Note:* All members holding 10% or more interest in LLC and assignees of membership interest or managers with 10% or more percentage distribution will be required to be fingerprinted by the local law enforcement agency. The Commission Enforcement Investigator will release the necessary forms and instruct you how to contact the appropriate agency.

In addition to the preceding documents required by all applicants, **PARTNERSHIPS** shall submit the following information per R436.1111:

- Partnership Agreement (required for limited partnerships).
- "Application for New Licenses or Application of Buyers for Transfer of Ownership or Interest in License" (Form LC-687) completed by each general partner.
- "Limited Partners, Stockholders or Members Statement" (Form LC-38), completed by each limited partner. In the case where the limited partner is a corporation or a limited liability company, an "Individual Stockholder or Corporate Stockholder Questionnaire" Form (LC-621), should be completed by each of the limited partners.

- *Note:* All general partners will be required to be fingerprinted by local law enforcement agency. Enforcement Investigator will release necessary forms and instruct you to contact local law enforcement agency.

Send all applications to: Michigan Liquor Control Commission
Manufacturers & Wholesalers Section
P.O. Box 30005
Lansing, MI 48909
(517) 322-1415
www.michigan.gov/lcc

Licensing Process:

An investigation for a new license or transfer of an existing license is initiated by the applicant submitting an "Application for New License, or Application of Buyers For Transfer of Ownership or Interest in License" (Form LC-687), and the appropriate corporate, LLC or partnership documents, along with a \$70.00 inspection fee for each license applying for. Upon receipt of this information, the Commission's Licensing Division will authorize an investigation and forward the file to the Commission's Enforcement Division. An investigator from the Commission's Enforcement Division will contact the applicant; advise them of the documentation necessary to be provided for review; and schedule an appointment with the applicant(s) to conduct the investigation. The investigation will cover a variety of areas including but not limited to: ownership structure; background of individuals; projected cost of the project/transaction; source of finances, including source of any money lender's finances; present ownership verification; and physical inspection of the facility, if the physical premises is built and available for inspection. Upon completion of the investigation, the investigator will submit a report to the Commission.

The Commission investigator will also release forms and fingerprint cards to the local law enforcement agency and a resolution form to the local governing body. The local law enforcement agency's investigation is independent of the Commission's investigation. It is the responsibility of the applicant to follow-up with the local law enforcement agency and the local governing body to ensure that their recommendations are forwarded to the Commission.

The Commission will issue a formal order approving, denying, or holding the application for additional information. The applicant will be advised of the Commission's decision and provided with a copy of the Commission Order. If approved, the applicant will be provided with a check sheet listing any additional requirements or documentation necessary to be submitted to the Commission prior to issuance of the license and a contract for signatures. If the application is denied, the applicant will have the opportunity to appeal the denial.

License Fee:

A Small Distiller license fee is \$100.00. License renews annually on May 1. The license fee may not be prorated for part-year licensure. License fee is payable upon MLCC approval of your application.

- MCL 436.1525

Michigan Spirit Distribution System:

Michigan operates as a “control” state for the sale of spirits. The Commission acts as the wholesaler for all spirit products. A Vendor of Spirits sells spirits to the Commission. The Commission then resells the spirits to both on and off-premises retail licensees. Spirit products are warehoused and delivered to retail licensees by Authorized Distribution Agents (“ADA”). An ADA is required to be certified by the Commission and is also required to have a contract with each Vendor of Spirits they represent to deliver their particular spirit products. Spirit products that are sold to consumers for off-premise consumption by licensed Specially Designated Distributors (“SDD”) are sold statewide at uniform prices set by the Commission. The uniform price set by the Commission is determined by the cost of the spirit product to the Commission plus a 65% mark-up, plus a combination of specific taxes. All of the aforementioned components of the system are further described below.

Vendor of Spirits:

A Small Distiller must also register with the Commission as a "Vendor of Spirits" in order to sell their spirit products to the Michigan Liquor Control Commission. Michigan is a "control" state, which means the Michigan Liquor Control Commission acts as the wholesaler for all spirit products, excluding mixed spirit drinks. The Commission purchases spirits from Vendors of Spirits. The Vendor of Spirits is responsible for registering product lines and filing quotations with the Commission. The Commission then adds the statutory mark-up (currently 65%) and specific taxes (currently totaling 13.85%) and sells the spirits to licensed retailers who in turn may sell to consumers. There is no fee for registering as a Vendor of Spirits. There is also no licensing investigation for registering as a Vendor of Spirits. Additional information on registering as a Vendor of Spirits may be found at the Commission’s Website www.michigan.gov/lcc, then click on “Products”.

Authorized Distribution Agents:

A Small Distiller who wishes to sell its spirits through the Commission’s spirit distribution system as a Vendors of Spirits must contract with an Authorized Distribution Agent (“ADA”) to warehouse and distribute their spirits. The ADA is required to be certified by the Commission to store and deliver spirits. A signed contract with a Certified ADA is required to be filed prior to the Commission approving any product distribution. **If a Small Distiller only intends to sell their product directly to consumers from their licensed manufacturing premises, they do not need to contract with an ADA.**

An ADA must have a written contract with each Vendor of Spirits they represent. The contract must specify the following:

- The contract must designate each brand of spirits the ADA is authorized to warehouse and deliver.
- The contract must specify the ADA’s authorized geographical delivery area. Statewide distribution must be covered by an individual ADA or by contracting with multiple ADA’s.
- The contract must indicate the responsibilities of both parties.
- The contract must have a specific beginning and ending date.
- The contract must specify the amount per case to be paid to the ADA by the Vendor of Spirits. This warehouse/delivery fee must be a minimum of \$8.32 per case. (The MLCC pays the Vendor of Spirits \$6.97 per case to partially offset this warehousing/delivery fee.)
- Both the ADA and the Vendor of Spirits must sign the contract.

An ADA is required to make weekly deliveries to any retail licensee making a one case or more minimum order. An ADA may not charge any split case fees nor may they charge any delivery fee except for emergency orders placed by retail licensees in addition to their weekly delivery. In such cases, an ADA may charge a \$20.00 delivery fee. The ADA is responsible for collecting payment from the retail licensee on behalf of the Commission and is responsible for submitting various sales documents to the Commission. An ADA may not have any interest, directly or indirectly in any Vendor of Spirits or in any retail licensee. A Vendor of Spirits must make each of its products available statewide to all retail licensees. While a Vendor of Spirits may utilize more than one ADA to cover the state, all document transmittals required by the Commission must be done by only one ADA.

Vendor Representative:

Vendors of Spirits are required to license an individual as a Vendor Representative who will represent them in transactions with the Commission. The Vendor Representative license fee is \$50.00. Current licensing period is May 1, 2008 through April 30, 2011. Additional information and application for Vendor Representative licenses may be found at the Commission's Website www.michigan.gov/lcc.

DEFINITIONS:

"Alcoholic liquor" means any spirituous, vinous, malt or fermented liquor, liquids or compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing 2 of 1% or more alcohol by volume which are fit for use for beverage purposes. The commission shall define and classify alcoholic liquor according to alcoholic content as belonging to 1 of the varieties hereinafter defined.

"Spirits" means any beverage which contains alcohol obtained by distillation, mixed with potable water or other substances, or both, in solution, and includes wine containing an alcoholic content of more than 21% by volume, except for sacramental wine and mixed spirit drink.

- MCL 436.1105(2), MCL 436.1111(13)

Manufacturing & Labeling:

Spirits must be manufactured, identified and labeled in accordance with federal spirit regulations published in Code of Federal Regulations Title 27, part 19 and Title 27, part 5. Please check with TTB regarding federal labeling requirements.

- Rule 436.1825, Rule 436.1827

Product Registration:

All spirit products must be registered with the Commission prior to their introduction in Michigan. All spirits are now registered on-line through the Commission's E-Quote system. Each Vendor of Spirits is provided with a User Name, Password and Database Identifier to access the on-line E-Quote spirit registration system. For more information on Michigan's on-line spirit product registration system, visit the Liquor Control Commission's Website at www.michigan.gov/lcc or contact the Commission's Financial Management Division at (517) 322-5882.

- Rule 436.1829

Hospitality Room – Sampling by Consumers:

A Small Distiller may allow persons 21 years of age or older to sample spirits manufactured by them at no charge in a hospitality room located at the manufacturing premises.

- MCL 436.2025

Interest In Another License:

A Small Distiller is prohibited from holding any direct or indirect interest in any other alcoholic beverage wholesale, retail or supplier license. Examples of prohibited interests include stock ownership; leasing real estate to/from another licensee; interlocking officers or directors; and financial interest in any manner, such as a moneylender, in another license.

- MCL 436.1603

Salesperson License:

Any person employed by a Small Distiller to sell, deliver, promote, or otherwise assist in the sale of alcoholic liquor in this state is required to hold a Salesperson license issued by the Commission. Office personnel who work exclusively at the manufacturing premises and have no personal contact with consumers off the licensed premises do not need a Salesperson license. Salesperson's must be 18 years of age or older. A Salesperson license is \$35.00 for three-year licensing period. Current licensing period is May 1, 2005 through April 30, 2008. Licensed salespersons are prohibited from being employed by a retail licensee on a paid or any other basis. Licensed truck drivers or delivery persons are prohibited from consuming alcoholic beverages while on duty.

- Rule 436.1853

Aid and Assistance:

Section 609 of the Code, being MCL 436.1609, and Rule 436.1035 prohibit alcoholic beverage manufacturers, suppliers or wholesalers from aiding or assisting any other licensee by giving them anything of value. Further, a licensee is prohibited from accepting aid and assistance from another industry member. Alcoholic beverage suppliers are prohibited from giving anything of value to their wholesalers or retailers. Likewise, alcoholic beverage wholesalers are prohibited from giving anything of value to their retailers. This principle is the cornerstone of Michigan's trade practices regulatory structure. It is designed to provide a level playing field for all industry members.

Suppliers and wholesalers are prohibited from giving anything of value to retail licensees, including but not limited to: alcoholic beverages, merchandise, furniture, fixtures, equipment, uniforms, cash or loans, labor, etc. While wholesalers and suppliers may provide point-of-sale materials such as posters, banners, table tents, flyers, etc., to retailers promoting their brands and prices, they are prohibited from providing anything that has any secondary use, value or purpose, other than actual advertising value to retailers without prior Commission approval. This same principle prohibits suppliers and wholesalers from providing free advertising, incentive programs, free or discounted product, draft system installation and maintenance, etc. Violations in the aid and assistance statute will result in all participants (retailer, wholesaler and supplier) being cited before the Commission.

- MCL 436.1609, Rule 436.1035

Inspection of Premises and Books & Records:

A licensee must make the licensed premises available for inspection and search by a Commission Investigator or any law enforcement officer empowered to enforce the Commission's rules and code during regular business hours or when the premises is occupied. The Commission or its duly authorized agent may examine the books, records or papers of a licensee.

- MCL 436.1217, Rule 436.1645

Samples to Retail Licensee and Staff:

A Small Distiller is allowed to sample their products with on-premises or off-premises retail licensees and the retailer's employees. Sample tastings may not be offered to consumers at licensed retail accounts. All containers used to sample products with retailers must be marked with the word **"Sample"** in lettering at least ½-inch high. A sample container must be removed from the premises within 24 hours and again may not be sampled by consumers.

- Rule 436.1001, Rule 436.1421, Rule 436.1511, Rule 436.1513, Rule 436.1863

Purchasing Drinks For Consumers:

A licensed Salesperson, for promotional purposes, may purchase one (1) drink for each customer of an on-premises retail licensee only. The drink shall be purchased from the on-premises licensee and shall be of a brand represented by the salesperson.

- Rule 436.1865

Advertising and Promotions:

Inside advertising signs must be unilluminated and no more than 3,500 square inches in dimension. Advertising that promotes anything other than or in addition to your alcoholic beverage product requires prior commission approval. Point-of-sale advertising may not contain the name of any retail licensee of promote anything other than your products. Advertising on anything having any secondary value, use or purpose other than advertising, requires prior Commission approval. Direct all advertising and promotion requests to Manufacturers & Wholesalers Section.

- Rule 436.1301 – Rule 436.1339

How To Contact Tobacco Tax and Trade Bureau ("TTB"):

TTB may be contacted as follows: www.ttb.gov

Federal Basic Permits:

TTB

Technical Services

550 Main St., Rm. 6525

Cincinnati, OH 45202

(800) 398-2282

Federal Label Approvals:

TTB

Alcohol Labeling & Formulation

1310 G Street, NW 4th Floor

Washington, DC 20220

(866) 927-2533

How To Contact The Michigan Liquor Control Commission:

Questions relating to a Small Distiller license and other non-retail licenses may be directed to:

Michigan Liquor Control Commission

Manufacturers & Wholesalers Section

P.O. Box 30005

Lansing, MI 48909

(517) 322-1415

(517) 322-5046 (fax)

Email: whiteheadt@michigan.gov

Website: www.michigan.gov/lcc